IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

State of Rajasthan Vs. Chhotelal & others

S.B.CRIMINAL APPEAL NO.174/1988
against the judgment dt.28.9.87 passed by
the learned Sessions Judge, Jodhpur,
in Sessions Case No.2/1986.

Date of Judgment: July 19, 2007

P R E S E N T

HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.V.R.Mehta, Public Prosecutor.
Mr.R.K.Gehlot, for accused respondents.

BY THE COURT:

1. This is an appeal by the State against the order of acquittal passed by the learned Sessions Judge, Jodhpur, whereby he acquitted accused respondents for the offences under Sections 306 and 498-A IPC.

2. The charge against the accused respondents was that after marriage of deceased Nirmala on 19.11.1984, they were

indulged in cruelty with deceased Nirmala, who was wife of accused Harish Kumar and on account of this, she committed suicide in the intervening night of 14.9.85 and 15.9.85 between 3 to 4 AM. After committal of this case, learned Sessions Judge framed charges against the accused respondents u/ss.498A and 306 IPC. The prosecution examined 15 witnesses. The statements of accused were recorded under Section 313 CrPC. No evidence was led in defence. After hearing arguments and examining the record, the learned trial Judge passed the order of acquittal.

3. While assailing the judgment of the learned trial Judge, learned Public Prosecutor has drawn my attention to the statements of the prosecution witnesses particularly Jhumerlal (PW 1), neighbour of accused where Nirmala died, Shiv Kumar (PW 7) and Arvind Kumar (PW 8) (brothers of deceased Nirmala), Kaushalya, sister of deceased (PW 9), Snehlata, sister in law of deceased (PW 10), Gordhanlal Sharma, father of deceased (PW 11) and Gopali devi, mother of deceased Nirmala (PW 13). According to the learned Public Prosecutor, the learned trial Judge has not rightly appreciated the statements of these witnesses, who have categorically stated that deceased Nirmala was subjected to cruelty before her death by burns.

4. On the contrary, learned counsel for the accused respondents has supported the judgment of the trial Judge and argued that there is not an iota of evidence to prove the charge of cruelty or of abetment to suicide so as to discard the findings of acquittal, recorded by the learned trial Judge.

5. I have gone through the record and re-appraised the evidence on record. It is true that except Arvind Kumar (PW 8), no prosecution witness has said about the demand of dowry but the question to be seen is that whether any cruelty was committed by the accused respondents so as to draw the presumption under Section 113A of the Indian Evidence Act.

6. Jhumerlal (PW 1) is a neighbour. He has categorically stated in his cross examination that after the marriage, he noticed no dispute between Nirmala and the family of accused respondent Vaidhji Chhotelal.

7. Another neighbour Smt.Rami (PW 3) is a hostile witness. Shaukat Ali (PW 4) is also a hostile witnesses. Basant Raj Bhandari (PW 6) is the person, who arranged the marriage between deceased Nirmala and accused respondent Harish Kumar but he too, has been declared hostile by the prosecution.

8. Shiv Kumar (PW 7), who is the brother of deceased Nirmala, has said in his cross examination at para 9 that Nirmala never made a complaint about giving beating by her in-laws and same thing, he repeated in the last line of his cross examination.

9. Arvind Kumar (PW 8), another brother of deceased Nirmala, has ofcourse said about the demand of dowry but in his cross examination, he has said that there was no talk about the dowry at the time of marriage but he has said that at the last, deceased Nirmala was sent with his brother Shiv Kumar and he told to Shiv Kumar that Nirmala's husband is demanding Rs.5000/- for which he told that it will be sent later-on. But this statement has not been supported by Shiv Kumar (PW 7), another brother of deceased Nirmala. Even no question has been asked in this regard to this witness Shiv Kumar (PW 7) and when he was confronted with the police statement Ex.D.2, he said that he did not narrate the fact about demand from the in-laws.

10. Kaushalya (PW 9), who is sister of deceased Nirmala, has said in the cross examination that Nirmala met her once only after marriage at Rawatbhata but in the cross examination, she has said that she never told to anybody about the complaint of Nirmala. In the last line of the cross examination, she has said that though there was no complaint from her but she ofcourse

told that her sister-in-law was not talking with her.

11. Snehlata (PW 10) has ofcourse told about making complaint to her but she has stated in her cross examination that she was not speaking anything on getting angry.

12. Gordhanlal Sharma (PW 11) is the father of deceased Nirmala. He has stated in the cross examination that Nirmala during her lifetime never made any complaint about her in-laws.

13. Gopali Devi (PW 13) is the mother of deceased Nirmala. She has ofcourse told about the cruelty but when she was confronted with her police statement Ex.D.10, she said that she did not narrate these facts in that statement. In this way, the evidence of relative witnesses of the deceased, if read as a whole, cannot lead to a conclusion that deceased Nirmala was subjected to cruelty.

14. It appears, as discussed by the learned trial Judge that deceased Nirmala was psychic lady. On getting herself burnt, report was lodged by accused respondent Chhotelal at Police Station, Bilara on the same day vide Ex.P.19 and the police enquired the matter under Section 174 CrPC. After death of Nirmala, her maternals including father and mother came from

Jaipur to Bilara, where Nirmala died. According to the statement of father of deceased, after funeral, he gave Rs.101/- to accused respondent Chhotelal, father-in-law of deceased, on account of `Nek'. The reason for lodging the F.I.R. (Ex.P.10) was that he was not convinced with the reply of the accused respondent Chhotelal, who was sleeping on the ground floor, where Nirmala died. This indicates that there was no fear in the mind for three days with the parental house members of deceased Nirmala about the cruelty but after consultation, this F.I.R. has been lodged. The finding of the learned trial Judge is that possibility of suicide on account of trifle matter of talks about the dowry might have prompted deceased Nirmala to commit suicide but the evidence led by the prosecution with regard to letters sent by the deceased and by her brother Anand Kumar, Ex.P.9 are not such, which may lead to a definite conclusion of cruelty and abetment of suicide. Learned trial Judge has elaborately evaluated and appreciated the evidence about the innocence of the accused, which requires no interference.

15. Consequently, this appeal is dismissed. The judgment of the learned Sessions Judge, Jodhpur, acquitting the accused

respondents for the offences under Sections 306 and 498-A IPC is maintained.

(DEO NARAYAN THANVI), J.

RANKAWAT JK, PS